

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DANIEL BRANCH, as an individual and on	)	CASE NO. CV 15-3303-R
behalf of all similarly situated employees,	)	
	)	ORDER GRANTING PLAINTIFF'S
Plaintiff,	)	MOTION TO REMAND
	)	
v.	)	
	)	
PM REALTY GROUP, LP and DOES 1	)	
through 10, inclusive,	)	
	)	
Defendants.	)	
	)	
	)	

Before the Court is Plaintiff's Motion to Remand, which was filed on July 28, 2015. Having been thoroughly briefed by both parties, this Court took the matter under submission on August 28, 2015.

To remove a case from a state court to a federal court, a defendant must file in the federal forum a notice of removal "containing a short and plain statement of the grounds for removal." 28 U.S.C. § 1446(a). When removal is based on diversity of citizenship, an amount-in-controversy requirement must be met. Ordinarily, "the matter in controversy [must] excee[d] the sum or value of \$75,000." 28 U.S.C. § 1332(a). In class actions for which the requirement of diversity of

1 citizenship is relaxed, § 1332(d)(2)(A)–(C), “the matter in controversy [must] excee[d] the sum or  
 2 value of \$5,000,000,” § 1332(d)(2). Under the Class Action Fairness Act (“CAFA”), a federal  
 3 district court has original jurisdiction over a class action where the class members number at least  
 4 100, at least one plaintiff is diverse in citizenship from any defendant, and the aggregate amount in  
 5 controversy exceeds \$5 million, exclusive of interest and costs. *Id.*

6 This last requirement under CAFA, the \$5 million amount in controversy, has become a  
 7 major point of contention between many parties. *See Dart Basin Operating Co. v. Owens*, 135  
 8 S.Ct. 547 (2014); *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193 (9th Cir. 2015);  
 9 *Lowdermilk v. U.S. Bank National Ass’n*, 479 F.3d 994 (9th Cir.2007). In *Dart*, the Supreme Court  
 10 held that a removing party must initially file a notice of removal that includes “a plausible  
 11 allegation that the amount in controversy exceeds the jurisdictional threshold.” 135 S.Ct. at 554.  
 12 When “a defendant's assertion of the amount in controversy is challenged ... both sides submit  
 13 proof and the court decides, by a preponderance of the evidence, whether the amount-in-  
 14 controversy requirement has been satisfied.” *Id.*

15 In *Ibarra*, the Ninth Circuit had to decide what proof a defendant seeking removal must  
 16 produce to prove the amount-in-controversy requirement under CAFA when the complaint did not  
 17 include a facially apparent amount in controversy. 775 F.3d at 1195. Following the reasoning of  
 18 the *Dart* Court, the Ninth Circuit found that remand back to the district court was necessary to  
 19 allow both sides to submit evidence related to the contested amount in controversy. “As with other  
 20 important areas of our law, evidence may be direct or circumstantial. In either event, a damages  
 21 assessment may require a chain of reasoning that includes assumptions. When that is so, *those*  
 22 *assumptions cannot be pulled from thin air but need some reasonable ground underlying them.*”  
 23 *Id.* at 1199 (emphasis added).

24 On March 17, 2015, Plaintiff Daniel Branch on behalf of himself and a proposed class of  
 25 similarly situated employees brought this action in the Superior Court of California against  
 26 Defendant PM Realty Group, LP (“PMRG”). Plaintiff alleges in his complaint several causes of  
 27 action all arising under California state law.

28 On May 1, 2015, Defendant PMRG removed this action from the Los Angeles Superior

1 Court to this Court, alleging CAFA jurisdiction under Title 28 U.S.C. §§ 1332(a), 1441, 1446. The  
2 current motion before the Court is Plaintiff's Motion to Remand based on the Defendant's failure  
3 to establish that this Court has subject matter jurisdiction over this action, specifically, that the  
4 Defendant has failed to satisfy the amount in controversy jurisdictional threshold of \$5 million.

5 In its Opposition to Plaintiff's Motion to Remand, PMRG asserts that there is \$6,422,666  
6 in controversy, based on assumed rates of violations for each of Plaintiff's claims. This estimate  
7 includes Warn Act penalties, unpaid overtime and minimum wage, unpaid rest breaks, unpaid  
8 meals, waiting time penalties, wage statement violations, and attorney's fees. PMRG's  
9 calculations are based on 184 class members with 19,215.57 workweeks for the putative class  
10 period. Moreover, PMRG's violation rate is based on the deposition testimony of several class  
11 members including the class representative, Daniel Branch.

12 Based on Mr. Branch's deposition testimony where he stated that he and putative class  
13 members were "often forced to forego a meal period and/or work during their meal period,"  
14 Defendant assessed two meal period violations and two rest period violations per workweek for  
15 each putative class member. This assessment produced a combined total of \$1,799,346 for all  
16 unpaid rest breaks and all unpaid meal periods. While PMRG is perhaps justified in using such a  
17 violation rate for Mr. Branch, PMRG erroneously applies this rate to the entire putative class.  
18 PMRG has failed to establish, by a preponderance of the evidence, that each putative class  
19 member, during the 19,215.57 workweek putative class period, is in fact entitled to such a  
20 violation rate. This generalized allegation is insufficient to allow PMRG to assume that all  
21 workweeks for each putative class member contained at least two meal period violations and two  
22 rest period violations. *See Ibarra*, 775 F.3d 1198-99. While it is true that Mr. Branch claims that  
23 he and putative class members were "often" forced to forego a meal period and/or work during  
24 their meal period, this does not mean that such violations occurred in each and every shift of each  
25 and every class member. *See id.* at 1199. It says nothing of the frequency of which PMRG would  
26 deprive class members of their entitled meal periods or rest periods. This claim accounts for  
27 \$1,799,346 of PMRG's asserted amount in controversy.

28 Even assuming that the remaining claims are validly established, PMRG fails to show that

1 there is more than \$5 million in controversy. The Court finds that PMRG fails to adequately  
2 support its calculations of the amount placed in controversy and therefore this Court lacks  
3 jurisdiction over this case under CAFA.

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand is GRANTED. (Dkt. No.  
5 18)

6 Dated: September 8, 2015.

A handwritten signature in blue ink, appearing to read 'Real', is positioned above a horizontal line.

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9 MANUEL L. REAL  
10 UNITED STATES DISTRICT JUDGE  
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